



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: OKWENGU, MUSINGA & SICHALE, JJ.A.)

CIVIL APPLICATION NO. 59 OF 2020

BETWEEN

SIMBIRI NAN-BELL COMMUNITY

HEALTH CENTRE LIMITED .....APPLICANT

AND

ERICK ODEDE.....1<sup>ST</sup> RESPONDENT

ELIJAH MIRUKA..... 2<sup>ND</sup> RESPONDENT

SPENCER OTIENO .....3<sup>RD</sup> RESPONDENT

THOMAS OLUOCH NYAKADO.....4<sup>TH</sup> RESPONDENT

EQUITY BANK LIMITED.....5<sup>TH</sup> RESPONDENT

(Application to strike out the notice of appeal lodged by the appellant in respect of the ruling and order of the Environment and Land Court at Migori (Ongondo, J.) dated 12th March, 2020

in

MIGORI ELC APPEAL NO. 12 OF 2019)

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RULING OF THE COURT

- [1] By a notice of motion dated 5th June, 2020 the applicant, who is the respondent in the intended appeal, seeks to have the notice of appeal dated 25th March, 2020 which was lodged by the 1st to 4th respondents struck out.
- [2] Pursuant to the Covid-19 Practice Directions, the hearing of the appeal proceeded by way of written submissions following hearing notices served on the respective parties.
- [3] The intended appeal is against the ruling of the ELC Court dated 12th March, 2020 in which the learned judge upheld a preliminary objection that was lodged by the applicant. The notice of appeal was lodged on 26th March, 2020 and served on the applicant on 14th May, 2020. Although duly served with a hearing notice, the respondents have not filed any written submissions or reply to the applicant’s motion.
- [4] Under **Rule 75** of the **Court of Appeal Rules**, a notice of appeal is required to be lodged within 14 days of the date of the decision against which it is desired to appeal and under **Rule 77** of the **Court of Appeal Rules**, the notice of appeal is required to be served against all persons directly affected by the appeal within 7 days after lodging of the notice.
- [5] It is evident that the intended appellants did not comply with **Rule 75** or **Rule 77** of the **Court Rules**, as the notice of appeal was filed 16 days after the judgment was delivered and served on the intended respondent about 48 days after the notice was filed. Under **Rule 84** of the **Court Rules** this Court has powers to strike out the notice of appeal or the appeal, where some essential step has not been taken or has not

been taken within the prescribed time. It is clear that the notice of appeal was neither filed nor served within time.

[6] In the circumstances, we allow the applicant's motion, and strike out the notice of appeal. We award costs to the applicant.

**Dated and Delivered at Nairobi this 19<sup>th</sup> day of March, 2021.**

**HANNAH OKWENGU**

.....

**JUDGE OF APPEAL**

**D. K. MUSINGA**

.....

**JUDGE OF APPEAL**

**F. SICHALE**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**